IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.209/2001

Vishnu Yeshwant Parab,
Deputy Superintendent of Police,
Presently posted at
Police Training School, Valpoi,
Sattari, Goa 403 506,
major, married, Indian National,
resident of House No.234,
Malpem, Pernem, Goa 403 512 .... Petitioner.

V/s.

1. State of Goa,
through the Secretary (Home),
Secretariat, Panaji, Goa 403 001;

2. The Director General of Police,
Police Headquarters,
Panaji, Goa. 403 001;

3. Goa Public Service Commission,
E.D.C. House, Atmaram Borker Road,
Panaji, Goa 403 001,
Through its Secretary,

4. Shri Finton I.D'Souza,
Dy. Superintendent of Police,
Police Headquarters,
Panaji, Goa 403 001.

5. Shri Arun Shankar Bandodkar,
Police Inspector,
Police Training School, Valpoi,

6. Shri Vilas B.P. Gaonkar,
Dy. Superintendent of Police,
Sp. Branch, C.I.D.,
P.Hq. Panaji, Goa.

7. Shri Apa K. Teli,
Addl. Superintendent of Police,
Crime Branch, Police Headquarters,
Panaji, Goa.

8. Shri D.K. Sawant,
Sub-Divisional Police Officer,
Ponda, Goa.

9. Smt. Anita M.Fernandes alias
Rodrigues, Dy. Superintendent of
Police, Security, P.H.Q.,

Panaji, Goa,

10. Shri Mangaldas K.N. Desai,
Dy. Superintendent of Police,
Foreigners Branch, C.I.D.
P.H.Q., Panaji, Goa.

11. Shri Omprakash R. Kurtarkar,
Dy. Superintendent of Police,
Crime Branch, C.I.D.,
P.H.Q., Panaji, Goa.

12. Shri Francis A.M. Fernandes,
Dy. Superintendent of Police
(Railways) through P.H.Q.,
Panaji, Goa.

13. Shri M.T. Fernandes alias
Tony Fernandes, Dy. Superintendent
of Police, Airport Security,
Dabolim, Goa.

14. Shri Jose Allan F. D'Sa,
Dy. Superintendent of Police,
Sub-Divisional Police Officer,
Panaji, Goa.

15. Shri Vaman P. Tari,
Dy. Superintendent of Police,
Immigration, Mormugao, Goa.

16. Shri Jaiprakash M. Nagvekar,
Police Inspector, Police
Headquarters,
Panaji, Goa.

17. Shri Nilu S. Raut Desai,
Police Inspector, Goa Reserve
Police, Altinho, Panaji, Goa.

18. Shri Deu S. Banaulikar,
Police Inspector, Calangute
Police Station,
Calangute, Goa.

19. Shri Francisco P. Almeida,
Police Inspector, Tourist Cell,
Panaji, Goa.

20. Shri Umesh Y.N. Gaunkar,
Police Inspector, Margao Town
Police Station, Margao, Goa.

21. Shri Shamba M. Sawant,

Police Inspector, Bicholim
Police station, Bicholim, Goa.

22. Shri N.C. Raikar,
Police Inspector, Goa Reserve
Police, Altinho, Panaji, Goa.

23. Shri S.R.N. Goltekar,
Police Inspector,
Porvorim Police Station,
Porvorim, Goa. ..... Respondents.

Shri S.G. Dessai, Sr. Advocate with Mr. D.B. Ambekar, Advocate for the petitioner.

Shri H.R. Bharne, Govt. Advocate for respondents No.1 and 2.

Shri H.D. Naik, Advocate for respondent No.3.

Shri J.P. De Souza, Advocate for respondent No.10.

Shri M.S. Sonak, with Shri D. Pangam, Advocates for respondent No.14.

Shri D.P. Bhise, Advocate for respondent No.20.

CORAM : A.M. KHANWILKAR &
P.V. HARDAS, JJ.

DATE OF RESERVING THE
JUDGMENT : NOVEMBER 17, 2003.

DATE OF PRONOUNCING THE
JUDGMENT : DECEMBER 2, 2003.

J U D G M E N T : (Per KHANWILKAR, J.)

By this Writ Petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the seniority list dated 22.12.2000 (Exhibit-P-1) of the Police Inspectors; Review Promotion Orders (Exhibit-P-2); Seniority List dated

17.2.2001 (Exhibit-P-3) being the consequent re-adjusted tentative Seniority List of Police Inspectors and the Deputy Superintendents' Promotion Order (Exhibit-P-4) dated 22.2.2001 being the consequent ad hoc promotions. The petitioner by way of amendment prayed for further relief of quashing and setting aside the tentative Seniority List of Police Inspector (Exhibit-P-3/A) dated 6.6.2003 and the Second Final Seniority List of Police Inspectors (Exhibit-P/B). The petitioner has also prayed for direction against the respondents No.1, 2 and 3 to maintain the petitioner's finalised ranking as regular junior scale officer in the Goa Police Service and to refrain from down ranking the petitioner qua the direct recruit respondents in the petition and further commanding the respondents No.1,2 and 3 to consider the petitioner from time to time for further promotions in the Goa Police Service based on the present finalised regular ranking, both for the ad hoc or the regular promotions, without supersession by the present juniors, the respondents No.8 onwards in this petition. The petitioner prayed for interim relief during the pendency of the writ petition. It is not necessary for us to advert to all the events stated it the writ petition. Suffice it to mention that the petitioner and the private respondents were recruited/appointed to the post of "Police Sub-Inspector". The petitioner and

the respondents No.4 to 7 were selected for direct recruitment/appointment to the post of Police Sub-Inspector in the 1971 batch and underwent training; whereas, respondents No.8 and 9 were selected for direct recruitment/appointment to the post of Police Sub-Inspector (PSI) in 1974 batch. Respondent No.19 who has now retired after attaining superannuation, was promoted to the post of PSI from 23.11.1973. Respondents No.10 to 16 were selected for direct recruitment/appointment to the post of PSI in 1979 batch and respondents No.17, 18, 20 to 23 in 1981 batch. The relevant Seniority Rules were notified and brought into effect from the date of Notification known as "the Goa Government (Seniority) Rules, 1967". For determining the relative seniority of direct recruits and promotees, Rule 7 of the said Rules is relevant, which reads thus :

> " 7. **Relative seniority of direct recruits and promotees.**- The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the percentage vacancies reserved for direct recruitment and promotion respectively in the recruitment rules."

Rule 5 of the said Rules is also relevant, which reads thus :

> " **5. Direct recruits. -** Notwithstanding the provisions of rule 4, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the Union Public Service Commission or other selection authority, persons appointed as a result of earlier selection being senior to those appointed as a result of a subsequent selection.
>
> Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit."

2. The first seniority list in relation to the petitioner and the private respondents in this petition was issued on 6.10.1979, the second seniority list was issued on 17.1.1983 and the third seniority list was issued on 5.6.1985. The fourth seniority list was issued on 21.1.1986. The seniority list as prepared in 1986, was pursuant to the decision of the High Court dated 1.9.1984. Applying the principles stated by the High Court in the said decision, in this seniority list of 21.1.1986 the petitioner was placed at serial No.55, although he was from 1971 batch; whereas his juniors who were appointed in 1974, 1979 and 1981 batch were shown senior to him. That was done on the basis of date of confirmation of the incumbent. Later on proviso to Rule 7 was inserted on 5.1.1987.The

relevant extract of the said proviso, which is relevant for our purposes, reads thus :

> "... Seniority already determined in accordance with the existing rules on the date of issue of this Notification will not be reopened. In respect of the vacancies for which recruitment actions have already been taken, on the date of issue of this Notification either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the existing rules."

3. In other words, the seniority list of 21.1.1986 prepared on the basis of the relevant Rules as it existed, and interpreted by this Court in its decision dated 1.9.1984, was to become final and not to be reopened. On the basis of the said seniority list of 1986, respondent No.14 was promoted to the post of "Police Inspector" on 16.10.1987; whereas respondent No.10 came to be promoted as "Police Inspector" on 25.5.1987. The promotion of respondents No.10 and 14 to the post of "Police Inspector" on the basis of the seniority list of 1986 was, admittedly, not questioned by the petitioner. In fact, their promotion was challenged before the Central Administrative Tribunal (CAT), which was rejected on 8.3.1990. Later on the final seniority list of "Police Inspectors" was published on 12.3.1990, in which, the name of the petitioner does not figure.

This is so because the petitioner came to be appointed on ad hoc basis as Police Inspector only on 6.8.1993. Later on, fifth seniority list in respect of the post of "Police Sub-Inspector" came to be published on 15.9.1995. In this seniority list, however, the petitioner was shown at the proper place, on the basis of the date of his entry in service and not the date of confirmation, on which basis he was placed at Sr. No.55 in the fourth seniority list dated 21.1.1986. Soon thereafter, sixth seniority list dated 21.3.1996 was issued. This seniority list was, more or less, on the same pattern of the fifth seniority list, which was on the basis of the date of entry in service and not the date of confirmation. However, this seniority list was challenged before the High Court by way of Writ Petition No.103/96 filed by one Shashikant R. Dessai and others. This Court, by its Judgment and Order dated July 8, 1998 was pleased to quash the senoirity list of 1996 and directed the Government to rearrange the seniority of the persons from the cadre of "PSIs" in accordance with the actual date of their entry in the cadre. This Court further directed the Government that if recruitment is made from both sources at the same time, then inter se seniority be fixed amongst them by following the principle of rota quota. It was also directed that after fixing the seniority accordingly, the Government to regulate all

promotions higher to the post of Sub-Inspectors. This petition was filed by the promotees of 1984 batch. Indeed, the petitioner was not a party to the said writ petition. Similarly, respondent No.10 Shri Mangaldas K.N. Dessai, was not a party to the said writ petition. However, respondent No.10 who is from 1979 batch questioned the correctness of the decision of this Court in Writ Petition No.103/1996, decided on 8.7.1998, before the Apex Court by way of Special Leave Petition (Civil) No.12871/1999. In the meantime, after the decision of the High Court, seventh seniority list of PSIs, dated 28.10.98 was released. Again in this seniority list, placement of the petitioner was shown at proper place on the basis of the date of entry in service and not the date of confirmation. The appeal preferred by respondent No.10 before the Apex Court was disposed of by Judgment and Order dated February 28, 2000 as reported in 2000 SCC (L&S) 763. The Apex Court has noted that the respondent No.10 herein was not a party to the Writ Petition No.103/1996, decided by this Court on 8.7.1998. The Apex Court has also noted the specific and the only grievance of the respondent No.10 in the said appeal, contending that the rules issued on 29.5.1987, published in Gazette Notification No.2/33/76-PER dated 5.2.1987 contained a saving clause which was introduced in the form of proviso to

Rule 7, which is extracted in paragraph (2) above. On the basis of that proviso, respondent No.10 contended before the Apex Court that his seniority in the cadre of "Sub-Inspector" was finalised on 21.1.1986 in which list, his name was shown at serial No.22 and that position cannot be interfered with in view of the abovesaid saving clause. The Apex Court in para 6 of the reported Judgment has plainly accepted the grievance of the respondent No.10 by observing that the contention was well-founded in view of the express language of the saving clause. On that reasoning, the Apex Court modified the directions issued by the High Court in the decision dated July 7, 1998 to the effect that so far as seniority of the respondent No.10 herein, as per the seniority list dated 21.1.1986 is concerned, the same cannot be disturbed. It is relevant to note that respondent No.14 herein had also filed a Writ Petition in this Court challenging the seniority list of 1996. In that writ petition, the contention of respondent No.10 which received approval of the Apex Court in the light of the saving clause referred to above, was specifically raised in the form of Ground (f). However, in view of the dictum of the Apex Court in the case of respondent No.10 herein, the respondent No.14 chose to withdraw his writ petition. It is relevant to note that the petitioner was a party in the said writ petition, preferred by the respondent

No.14. After the above decision of the Apex Court, the State Government was obliged to re-examine the position and restore the status of the parties as obtained in the seniority list dated 21.1.1986, having regard to the saving clause inserted in 1987. Accordingly, eighth final seniority list came to be issued on 22.12.2000. This seniority list, as mentioned earlier, applying the dictum of the Apex Court was finalised, in which the petitioner was placed at serial No.55 on the basis of the date of confirmation and not the date of his entry in service, as was the principle applied while preparing the seniority list dated 21.1.1986, which had been saved by the saving clause. This seniority list, is essentially the subject-matter of challenge in the present writ petition, being Exhibit P-1. After the issuance of this seniority list dated 22.12.2000, consequential review promotion orders were issued readjusting retrospectively promotions of the concerned persons as "PSIs". Later on tentative seniority list was issued on 17.2.2001 (Exhibit-P3) which had maintained the position as reflected in the impugned seniority list dated 22.12.2000 being the readjusted tentative seniority list of PIs. On the basis of the seniority position, ad hoc promotions to the post of Dy. Superintendent of Police have been made and while this writ petition was pending,

tentative seniority list dated 6.6.2003 and final seniority list dated 14.8.2003 have been issued. All these steps on and from the issuance of seniority list dated 22.12.2000 are subject-matter of challenge in this writ petition.

4. According to the petitioner, the Government could not have readjusted his seniority, ignoring the settled legal principle of date of entry in the service for determining the inter se seniority between the direct recruits and the promotees. It is contended that the decision of the Apex Court at the instance of respondent No.10 herein was of no consequence because the Apex Court order only protects the seniority of respondent No.10 as no general directions have been given which can enure to the benefit of other persons similarly situated. It is also contended that in any case, the decision in the said case was not binding on the petitioner because the petitioner was not a party to the said appeal. More over, contends Mr.Dessai for the petitioner, that the said decision is clearly per incuriam or sub silentio because it has not considered the efficacy of Rule 5 and secondly it wrongly assumes that the 1986 seniority list still subsists. Inasmuch as, 1986 seniority list was already replaced by the seniority list of 1995 dated 15.9.1995 and that seniority list

was still operating in law because the decision of this Court in Writ Petition No.103/1996 has only set aside the seniority list dated 21.3.1996. It is also contended that the decision of the Apex Court is inapplicable to the fact situation of the present case because the issue before the Apex Court was with reference to construction of Rule 7 which governs the inter se seniority position between the direct recruits and the promotees; whereas the present contest is essentially between the direct recruits inter se and, therefore, Rule 5 will have to be applied. It was further contended that this Court should decide all contentions available to the petitioner on merits instead of nonsuiting the petitioner on the basis of the decision of the Apex Court. To buttress the above contentions, reliance was placed on several decisions of the Apex Court i.e. 1991(4) SCC 139 (paras 39 to 41); 1994 Supp.(3) SCC 385 (para 24); 1989 (1) SCC 101 (paras 11 & 12); 2000 (5) SCC 488 (para 20); 2001 (6) SCC 356 (paras 19 & 23); 1975 SCC (L&S) 412; 2000(2) SCC 420; 2002 SCC (L&S) 711; AIR 1985 SC 582 (paras 26, 35 & 36); AIR 1990 SC 1607 (paras 44(A) and (B) and of Delhi High Court in 1983 (2) SLR 693.

5. On the other hand, the substance of the arguments of Mr. D'Souza, Mr. Sonak, Mr. Bharne,

Government Advocate, and Mr. Bhise for the respondents is that the petitioner does not deserve any indulgence. It is contended that the petition deserves to be dismissed on the ground of laches and acquiescence because after the issuance of seniority list dated 21.1.1986, respondents No.10 and 14 were admittedly promoted to the post of "Police Inspector" in 1987. Their promotions were questioned, but became final by rejection of the petition by the Tribunal. The petitioner did not take up the matter any further. Moreover, the seniority list of the "Police Inspectors" was prepared as back as in the year 1990 in which the name of the petitioner did not appear as the petitioner was promoted on ad hoc basis as "Police Inspector" only in August, 1993. Besides, it is contended, that the seniority list of 1996 was challenged by respondent No.14 in Writ Petition No.246/1996 to which the petitioner was party. In that writ petition, specific ground i.e. Ground (f) was taken so as to contend that in view of the proviso inserted in 1987, the position as obtained in 1986 seniority list was saved and that could not be undone by applying the principle of 'date of entry in service', which plea has received the approval of the Apex Court in the appeal filed by the respondent No.10 herein. It is contended that after 1986, much water has flown and the petitioner did not challenge those actions till filing of the present petition only in

the year 2001. Accordingly, it is contended that the petition as filed by the petitioner deserves to be dismissed on the ground of laches and acquiescence alone. It is further contended that the seniority list dated 21.1.1986 was made on the basis of the decision of the High Court by applying the principle of date of confirmation, as was the view taken by the High Court in that decision. It is also contended that the decision of the Apex Court in appeal, in the case of the respondent No.10 cannot be said to be per incuriam because the Apex Court was specifically called upon to consider the purport of the proviso and has accepted the argument of the respondent No.10 relating to interpretation thereof so as to give relief to respondent No.10. It is contended that it is not open for the petitioner to now rely on the decision of the Apex Court in Direct Recruits' case as reported in AIR 1990 SC 1607 because that decision cannot have application to the fact situation of the present case. For, in the first place, the seniority list prepared in 1986 was pursuant to the decision of the High Court which had become final. Moreover, by introduction of proviso to Rule 7, the position as obtained prior to 1986, in that sense, has been validated by the statutory Rule. The validity of the proviso has not been questioned at all, nor it is open to the petitioner to question the same at this

distance of time. On the other hand, it is contended that, the petitioner would be bound by earlier decision of the High Court. Mr. Bharne placed reliance on the decision of the Apex Court reported in Anil Kumar Neotia and ors. v. Union of India and ors., reported in AIR 1988 SC 1353 (para 18) to contend that even though the petitioner was not a party to the proceedings before the Apex Court, the decision in appeal of respondent No.10 would nevertheless be binding on all concerned, much less the petitioner. Mr. Sonak placed reliance on the decision reported in 1975 SCC (L&S) 412 to contend that since the petitioner is in effect challenging the position which has been crystalised vide seniority of 1986, that challenge should be rejected on the ground of laches and in particular, acquiescence in view of fact situation of the present case. Reliance is also placed on the case of Suganthi Suresh Kumar v/s. Jagdeeshan, reported in (2002) 2 SCC 420 (para 9) to contend that it is impermissible for the High Court to ignore the decision of the Apex Court on the specious argument that the Apex Court did not consider the efficacy of Rule 5. It is contended that the Apex Court has adverted to the proviso and accepted the plea of the respondent No.10, on the basis of construction of that proviso. In such a case, it is not possible to even remotely suggest that it is

glaring case of obtrusive omission. Reliance is also placed on the decision in the case of Fuerst Day Lawson Ltd., v/s. Jindal Exports Ltd., (2001) 6 SCC 356 (Para 23) to contend that prior decision of this Court on identical facts and law binds the Court on the same points of law in a latter case. On the above contentions, the respondents have opposed this petition.

6. The Counsel for the petitioner, in rejoinder, has argued that there is no basis for the argument that the petition suffers from laches and acquiescence. According to the petitioner, however, since mistake in the seniority list of 1986 was corrected in the next or following seniority list of 1995, there was no occasion for the petitioner to question the correctness of the said seniority list of 1986. According to Mr. Dessai, since the correct position was stated in the seniority list of 1995 and it was continued in the subsequent two seniority lists issued till 1998, there was no occasion for the petitioner to approach the Court of law. It is, therefore, submitted that the argument of laches and acquiescence, is not well founded.

7. Having considered the rival submissions, in our view, the principal question is; whether the

petition as filed, suffers from laches and acquiescence ? We have no hesitation in accepting the arguments of the respondents in this behalf. Because, in the first place, the seniority list dated 21.1.1986 was issued pursuant to the decision of the High Court, applying the principle of date of confirmation in service. That decision of the High Court was allowed to attain finality by the petitioner. And the Petitioner, in fact, did not question the said Seniority List of 1986 at all. Moreover, even though the seniority list was issued on 21.1.1986, placing the petitioner much below his juniors from 1974 to 1979 batch as well as of 1981 batch; whereas the next or following seniority list came to be issued only on 15.9.1995, the petitioner did not challenge the correctness of the seniority list of 1986 showing his placement at sr. No.55, nor the promotion of respondents No.10 and 14 as "Police Inspectors" in 1987. Obviously, therefore, it is a clear case of laches and also one of acquiescence. A priori, it will not be open for the petitioner to question the correctness thereof, and more particularly after the introduction of proviso to Rule 7 of the Rules, which is a saving clause. In our view, the impugned seniority list dated 22.12.2000 is only reiteration of the crystalised position of 1986. In other words, if this Court were to accept the case of the petitioner,

that would inevitably result in enabling the petitioner to set up challenge to challenge the crystalised position of 1986 which has been saved by express provision, introduced by statutory rules in 1987, validity of which is not put in issue. Moreover, on the basis of the seniority list of 21.1.1986, the respondent No.10 and 14 were promoted to the post of "Police Inspector" and even to the higher posts; whereas the petitioner came to be promoted on ad hoc basis to the post of "Police Inspector" for the first time only in August, 1993. The petitioner accepted that situation, without any demur, as he did not challenge the promotions of other junior officers of subsequent batch, superseding him though. In that sense, the petitioner has also acquiesced of the events which emanated from the seniority list of 1986, albeit adverse to the petitioner. And those events have happened much before 1995 when the next seniority list came to be issued showing the correct position of the petitioner. In the circumstances, we have no hesitation in dismissing this writ petition and refrain to exercise the extra ordinary jurisdiction under Article 226 of the Constitution of India.

8. We are also not impressed with the argument of the petitioner that the decision in the

appeal filed by the respondent No.10 before the Apex Court is per incuriam or sub silentio or for that matter it is not binding on the petitioner. In our view, it is not possible to countenance that submission because, Rule 7 is the relevant rule for determining the seniority inter se between the direct recruits and the promotees. The petitioner has questioned the entire seniority list of 2000 and not confined to the placement of direct recruits inter se. It is, however, during the arguments it is contended that respondent No.19 who was a promotee and having retired from the service, the contest is now only between the petitioner and the other private respondents who are also direct recruits and for which reason, Rule 5 will have to be considered. In our view, however, this argument clearly overlooks the principle stated by the Apex Court in the appeal filed by respondent No.10, that the seniority position of the respondent No.10 (will have to be read as concerned or similarly placed persons) as obtained on 21.1.1986 cannot be disturbed having regard to the saving clause. That exposition will not only apply to the respondent No.10 who was appellant before the Apex Court, but obligates the State Government to give effect to the same being law, by virtue of Article 141 of the Constitution. In the circumstances, the said decision can neither be said to be per incuriam or sub

silentio; nor the argument of inapplicability of the said decision-either because of the seniority of direct recruits inter se was not put in issue before the Apex Court or because the petitioner was not a party in the said appeal, will be of any avail. The argument canvassed on behalf of the petitioner clearly overlooks that the seniority list dated 21.1.1986 was prepared on the basis of the decision of the High Court, which has become final between the parties. By that decision, the State was obliged to apply the principle of 'date of confirmation' having regard to the construction given by the High Court to the relevant Rules. We find force in the argument canvassed on behalf of the respondents that the decision of the Apex Court in Direct Recruits' case (supra) will be of no avail to the petitioner because it will have prospective application and particularly when there is insertion of proviso to Rule 7 whereby the position as obtained in the seniority list dated 21.1.1986, has been validated.

9. In the circumstances, we see no reason to go into other wider questions raised on behalf of the petitioner because, in our view, this is not a fit case for exercise of writ jurisdiction under Article 226 of the Constitution of India. Hence, dismissed with no order as to costs.

A.M. KHANWILKAR, J.

P.V. HARDAS, J.

ssm.